IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 236 OF 2004

Vishwanath Revansidhappa Shahapure ... Appellant

V/s

Sunanda Shivanand Shirur & ors. ... Respondents

Mr. G.S. Godbole for the appellant.

Mr. S.S. Karandikar for the Respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 22ND SEPT., 2005

P.C.:

1. Heard.

2. Rule. Rule made returnable forthwith by consent.

3. This is an appeal preferred by the appellant against the judgment and order passed by the Addl. District Judge, Solapur, dated 20.10.2003 when appeal was partly allowed with proportionate cost and judgment and decree dated 30.9.2000 passed in Civil Suit No. 474 of 2003 was quashed and set aside only to the extent of enquiry order for determination of the mesne profits. Rest part

of the judgment and decree dated 30.9.2000 of the Trial Court was confirmed. The trial Court had decreed the suit of the plaintiff with declaration that the plaintiff was entitled to partition and separate possession of 1/28 share and each of the defendants 1 to 3 were entitled to 8/20 share and each of the defendants 4 to 6 were entitled to 1/28 share in the suit property and partition of the house premises were directed to be complied with by appointment of the Court Commissioner and for other consequential reliefs.

4. After hearing learned counsel for both sides for some time, it was apparent that the learned counsel for the appellant was raising the issue of jurisdiction of the lower appellate Court to entertain the appeal on the ground of valuation of the suit property for the purpose of jurisdiction in view of Sec.26 of the Bombay Civil Courts Act and Code of Civil Procedure and, therefore, it was thought fit to consider the issue of jurisdiction only at the initial stage.

5. The original Civil Suit No. 474 of 1995 was filed by the plaintiffs Smt. Sunanda Shivananda Shivrur and Smt. Shantabai Revansiddhappa Shahapure in the Court of Civil Judge, Sr.Divn., Solapur, seeking partition and

separate possession and alleging 2/5 share in the suit property. The Civil Judge, Sr.Divn., Solapur, by judgment and decree dated 30.9.2000 decreed the suit declaring 1/28th share to defendant Nos. 1 to 3 in the suit property. Thereafter, the matter was carried to the appellate Court being Civil Appeal No. 596 of 2000 challenging the judgment and decree passed by the Trial Court. However, the Addl. District Judge, Solapur, confirmed the order of the Trial Court and set aside the order only to the extent of mesne profits.

The learned counsel for the appellant submitted that the learned lower appellate Court Judge overlooked that, according to Sec.11 of the Bombay Civil Courts Act, in the plaint, the value of the suit property was Rs.2,50,000/- and for that purpose the Court fee was valued at Rs.1 lac being the value of alleged 2/5th share of original plaintiff in the suit property and, therefore, the appeal should have been filed before this Court and not before the District Court, Solapur and as such, the judgment and decree passed by the Addl. District Judge is invalid and without jurisdiction.

6. On perusal of the entire record it is apparent that, in the plaint, valuation of the suit property was made

at Rs.2,50,000/- and for the purpose of Court fees, the suit was valued at Rs.1 lac being the value of the alleged 2/5th share of the suit property. It is to be noted that though it was permissible to value the suit differently for the purpose of Court fees and jurisdiction, the appellate forum would be decided on the basis of valuation of the suit for the purpose of jurisdiction alone and consequently though the appellant has filed appeal in the District Court at Solapur, in view of Sec.26 of the Bombay Civil Courts Act as well as the provision of Civil Procedure Code, the appeal ought to have been returned to the appellant for presentation to this Court. Therefore, it is apparent that the impugned judgment and decree dated 18.10.2000 passed by the Addl. District Judge, Solapur in R.C.A. No. 596 of 2000 is invalid and without jurisdiction.

7. The learned counsel for the appellant put reliance on the ruling of the Supreme Court in the case of **Kiran Singh & ors. v/s Chaman Paswan & ors., reported in A.I.R. SC 340,** wherein it is observed as follows :-

> "Decree passed without jurisdiction is nullity and defect of jurisdiction whether it is pecuniary or territorial, or whether it is in

> respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

In this case also, the appellant's appeal filed in the District Court at Solapur was wrong since the suit was valued at Rs.2,50,000/- and the District Court could not have entertained the appeal and thus the District Court, Solapur was rendered quorum non juris, it has resulted in failure of justice.

This view is fortified by the ruling of this Court in the case of **Nirmal Quality Products v/s M/s. Contey Industries & anr.,** reported in **1995 (1) Mh.L.J. 189, wherein the Single Judge of this Court has observed** that the jurisdiction to hear an appeal is dependant on the valuation of the lis at its commencement. Pecuniary jurisdiction of the appellate Court to hear appeals arising out of decrees passed by the Civil Court is to be determined on the basis of the valuation in the plaint and not on the basis of decree passed in that suit. In view of this position, I have no doubt whatsoever that the judgment and decree passed by the District Court was nullity as contemplated under Sec.26 of the Bombay Civil

Courts Act and, as such, has to be set aside.

It is to be noted that, all other issues which were sought to be urged need not be elaborated at this juncture as the proper course to be adopted in this matter would be to set aside the order passed by the lower appellate Court with direction to return the appeal to the appellant for presentation to this Court.

8. Hence, it is held that the judgment and order passed by the Court of Addl. District Judge, Solapur, dated 18.10.2003 is hereby set aside and the matter is referred to the District Court, Solapur, with direction that the appeal should be returned to the appellant for presentation to this Court as per the relevant rules.

With these directions, this appeal is disposed of with no order as to costs.

Consequently, the Civil Application No. 229 of 2004 stands disposed of with no order as to costs.

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